IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

KGB TEXAS MARKETING/PUBLIC RELATIONS, INC. AND KGB TEXAS MEDIA, INC.	§	
Plaintiffs	§	
v.	§	**CIVIL ACTION NO. 5:17-cv-255**
kgb USA INC. AND GRAPE TECHNOLOGY GROUP, INC.	§	
Defendants	§	

ORIGINAL COMPLAINT

I. PARTIES

1. Plaintiff, KGB Texas Marketing/Public Relations, Inc., is a Texas corporation having its principal place of business in San Antonio, Texas, within the Western District of Texas, San Antonio Division.

2. Plaintiff, KGB Texas Media, Inc., is a Texas corporation having its principal place of business in San Antonio, Texas, within the Western District of Texas, San Antonio Division.

3. Defendant, kgb USA Inc., is a Delaware corporation, having its principal place of business at 3864 Courtney Street, Suite 411, Bethlehem, PA 18017.

4. Defendant, Grape Technology Group, Inc., is a Delaware corporation, having its principal place of business at 3864 Courtney Street, Suite 411, Bethlehem, PA 18017.

5. The Plaintiffs are sometimes referred to collectively as "Plaintiffs" or "KGBTexas." The Defendants are sometimes referred to collectively as "Defendants" or "kgb USA".

II.
JURISDICTION

6. Jurisdiction is proper pursuant to 28 U.S.C. §§ 1331, 1332, and 1338, and 15 U.S.C. § 1121.

7. The amount in controversy exceeds the minimal jurisdictional requirements.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

9. This Court has personal jurisdiction over Defendants because Defendants have sufficient minimum contacts with this State and, in particular, this Judicial District, and maintenance of the suit in this Judicial District does not offend traditional notions of fair play and substantial justice. Plaintiffs' claims arise in this Judicial District.

10. Defendants are offering to sell and are selling services in Texas. Defendants' sale of services in Texas is a subject of the instant dispute and the causes of action stated herein.

11. Defendants have offices in Texas, including offices in San Antonio and Austin.

12. One or more of the Defendants has a substantial office in San Antonio Texas, employing several hundred employees.

13. Defendants do business in Texas and are registered to do business in Texas.

14. Defendants claim to be "the world's largest independent provider of directory assistance and enhanced information services."

15. Defendants sent a cease and desist letter to KGBTexas in Texas asserting KGBTexas' use of "KGBTexas" in Texas infringes Defendants' trademark rights and threatening to sue KGBTexas due to its use of "KGBTexas" as its business name and trademark.

16. This Court has pendant jurisdiction over all of the claims asserted herein, these claims being necessarily determinable together with the federal claims.

III.
THE PARTIES

A. **KGBTEXAS**

17. Texan Katie Harvey incorporated her KG Brickman Public Relations public relations and advertising business the businesses in Texas in 1994. "KGB" corresponds with her former name, Katie G. Brickman.

18. To formalize use of KGB to identify her business and its services, Katie Harvey incorporated Plaintiff KGB Texas Marketing/Public Relations, Inc. in Texas on or about July 27, 2001 and continued her public relations and advertising business in that corporate entity. Her business is primarily known as "KGB" or "KGBTexas."

19. Katie Harvey incorporated Plaintiff KGB Texas Media Inc. in Texas. on November 25, 2008. Katie Harvey is the sole owner and CEO of both Plaintiffs.

20. Twenty-three years of continuous hard work has made KGBTexas into a substantial and successful public relations and advertising business. It employs approximately 40 public relations, advertising, public affairs, crisis communications and interactive marketing specialists, has offices in San Antonio and Houston, and markets through www.KGBTexas.com. It helps its business clients with their public relations and advertising communications throughout the southwestern United States, including Texas-based clients which operate nationally.

21. Accurate depictions of some of KGBTexas trademarks are:

22. The "KGB" and "KGBTexas" tradenames are well known as identifying KGBTexas and as trademarks identifying its public relations and advertising services to business clients in each of (a) the United States, (b) the southwestern United States ("southwestern United States" refers to the states of Texas, Oklahoma, Louisiana and Arizona), (c) Texas, (d) South Texas ("South Texas" refers to areas of Texas south of Dallas), and (e) KGBTexas' Home Counties ("Home Counties" refers to Bexar County and Harris County, where it has local offices.).

23. Prior to June 14, 2007, the KGB and "KGBTexas" tradenames were well known as identifying KGBTexas and as trademarks identifying its public relations and advertising services to business clients in each of (a) the United States, (b) the southwestern United States (c) Texas, (d) South Texas, and (e) KGBTexas' Home Counties ("Home Counties" refers to Bexar County and Harris County, where it has local offices.).

24. A partial list of immediately recognizable KGBTexas pre-June 14, 2007 substantial clients for its public relations and advertising services includes: Walmart, McDonald's, Insperity, Christus Santa Rosa, Caring Senior Service, Cordillera Ranch, GVTC,

IBC Bank, Kuntz McCombs, Zachary Holdings and Claro Group. Its center of gravity continues to be in San Antonio, Texas.

25. KGBTexas' success is due in part to its many years of constant efforts to make its KGB Texas tradename and trademark a well-known name and a well-known trademark for high quality public relations and advertising services. KGBTexas uses its KGBTexas tradename and trademark in its communications with its prospective and actual customers. KGB's Texas investments and efforts have been rewarded by successfully causing the relevant consuming public for its public relations and advertising services to associate its KGB and "KGBTexas" business names and trademarks exclusively with KGBTexas. KGBTexas has made substantial investments and efforts over many years to develop an excellent reputation and public recognition for its KGB and KGBTexas business names and trademarks. KGBTexas is continuing to make substantial investments and efforts in its KGB and KGBTexas business names and trademarks.

26. The KGB and KGBTexas tradenames and trademarks are an asset of substantial and incalculable value as the public symbol of KGBTexas' business and services.

27. KGBTexas continues to be owned and operated by Katie Harvey from its corporate headquarters located at 200 E. Grayson St., Suite 210 San Antonio Texas, 78215.

B. **kgb USA**

28. On information and belief,[1] Defendants began doing business under the name INFONOXX in about 1992. Defendant's business was initially primarily providing directory

[1] "On information and belief" is used as a convention to specifically identify factual contentions that will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. *See* Fed. R. Civ. P. 11(b)(3).

assistance and enhanced information services. Defendant's business was initially primarily located in Europe.

29. On information and belief, during or after 2007-2008 Defendants acquired Texperts, a United Kingdom-based firm.

30. On information and belief, during or after 2007-2008 Defendants began first using "KGB", or formulations of it, to identify their business and services.

31. On information and belief, during or after 2007-2008 Defendants began first offering KGB services in the United States.

32. On information and belief, during or after 2007-2009 Defendants began offering a 542542 "kgbkgb" "Ask Anything two-way text service" whereby customers submitted questions via SMS (text) message for a cost of about $1.49 per question

33. On information and belief, during or after 2007-2009 Defendants began offering in the United States a 542542 "kgbkgb" "Ask Anything two-way text service" whereby customers submitted questions via SMS (text) message for a cost of about $1.49 per question.

34. Defendants explain this service at http://542542.com/about as:

What is 542542 (kgbkgb)?

> kgb's text answer service currently operates in the US and Canada, 542542 (kgbkgb) combines the power of the company's best-in-class knowledge database with the judgment and skill of a specially-trained community of kgb Special Agents who provide quick, accurate responses to any question. Users who text 542542 (kgbkgb) receive real-time responses to questions any time, day or night, from any cell phone, for a cost of $1.49 ($1.00 CAD in Canada). Message and data rates may apply.
>
> Our Special Agents are specially-trained home-workers who provide you with human answers, 24 hours a day, 7 days a week, 365 days a year. Think you've got what it takes to answer all the questions America has for you? Check out the job here.
>
> Never sent a text message? Learn how to text a question to 542542 (kgbkgb) here.

> You can try the service from our homepage, or you can read more about us in our Press Room on our corporate site, here.

35. On information and belief, during or after 2008-2009 Defendants began offering in the United States a group buying business called "kgbdeals." Kgbdeals offers lifestyle deals to consumers.

36. On information belief, Defendants primarily sell their "KGB" services to prospective customers and actual customers through their http://www.kgbanswers.com/, http://542542.com/about and www.kgb.com websites.

37. The following are accurate depictions of some of Defendants "KGB" trademarks:

IV.
THE DISPUTE

A. **THE DISPUTE**

38. An actual and bona fide controversy exists between KGBTexas and Defendants concerning the respective parties' alleged lawful and unlawful use of the trademarks "KGB" and "KGBTexas" to identify the parties' respective services.

B. **KGBTEXAS' "KGBTEXAS" AND "KGB" PUBLIC RELATIONS AND ADVERTISING SERVICES**

39. Customers who purchase "KGBTexas" and "KGB" public relations services from KGBTexas are aware that they are purchasing those services from KGBTexas.

40. Customers who purchase "KGBTexas" and "KGB" public relations services from KGBTexas are aware that they are not purchasing business advertising services from kgb USA.

41. On information and belief, Defendants currently have no evidence in their possession or control showing the identity of any particular customers who purchased "KGBTexas" or "KGB" services from KGBTexas and were unaware aware they were purchasing those services from KGBTexas.

42. On information and belief, Defendants currently have no evidence in their possession or control showing the identity of a particular customers who purchased "KGBTexas" or "KGB" services from KGBTexas and mistakenly believing it was purchasing those services from kgb USA.

43. On information and belief, Defendants currently have no evidence in their possession or control showing the identity of a particular customer who purchased "KGBTexas" or "KGB" services from KGBTexas mistakenly believing it was purchasing those services from kgb USA.

44. Customers who purchase "KGBTexas" and "KGB" advertising services from KGBTexas are aware that they are purchasing those services from KGBTexas.

45. Customers who purchase "KGBTexas" and "KGB" advertising services from KGBTexas are aware that they are not purchasing business advertising services from kgb USA.

46. On information and belief, no entity has purchased "KGBTexas" or "KGB" services from KGBTexas mistakenly believing it was purchasing those services from kgb USA.

47. KGBTexas' sale of its "KGBTexas" or "KGB" advertising services is unlikely to confuse a substantial number of persons into believing KGBTexas' services have sponsorship, connection, or affiliation with Defendants or dilute Defendants' trademark rights.

48. On information and belief, Defendants have no evidence in its possession or control that any identifiable person has been actually confused into believing that any of KGBTexas' services have any sponsorship, connection, or affiliation with Defendants or their KGB services.

49. On information and belief, nowhere in the United States are Plaintiffs' "KGBTexas" and KGB advertising services and Defendants' KGB advertising services sold to the same customers for the same purposes.

50. On information and belief, Defendants have no evidence in their possession or control showing that anywhere in the United States are Plaintiffs' "KGBTexas" and KGB services and Defendants' KGB services sold to the same customers for the same purposes.

51. On information and belief, it is unlikely that any prospective customer ever has or ever will purchase KGBTexas' "KGBTexas" or KGB services under the mistaken belief that the services have any sponsorship, connection, or affiliation with Defendants or their KGB services.

52. On information and belief, Defendants have no evidence in their possession or control showing that any prospective customer ever has or ever will purchase "KGBTexas" or KGB services, under the mistaken belief that the services have any sponsorship, connection, or affiliation with Defendants or their KGB services.

53. Defendants have not suffered any lost sales due to KGBTexas offering to sell or selling any of its services.

54. On information belief, Defendants have no evidence in their possession or control showing they have suffered any lost sales due to KGBTexas offering to sell or selling any of its services.

55. KGBTexas' use of its "KGB Texas" and "KGB" trademarks shown in allegation No. 21 to identify its services is not likely to cause confusion with Defendants' use of its "KGB" trademarks shown in Paragraph 37 above as used by Defendants to identify Defendants' services.

C. KGB USA

56. Alternatively, Defendants' use of the "KGB" trademarks to identify Defendants' services is likely to cause confusion with KGBTexas' use of its "KGB Texas" and "KGB" trademarks to identify Plaintiffs' services

57. Alternatively, on information and belief, Defendants' advertising services and KGBTexas' advertising services have not been and are not likely to be sold to the same customers for the same purposes.

58. Alternatively, on information and belief, Defendants' advertising services and KGBTexas' advertising services have been and are likely to be sold to the same customers for the same purposes.

59. Alternatively, prospective customers of KGBTexas' services are not likely to purchase KGBTexas' services under the mistaken belief that KGBTexas has any sponsorship, connection, or affiliation with Defendants.

60. Alternatively, on information and belief, prospective customers are likely to purchase Defendants' KGB services under the mistaken belief that Defendants have a sponsorship, connection, or affiliation with KGBTexas or their KGB services.

61. Alternatively, Defendants do not currently sell business public relations and advertising services which are sufficiently confusingly similar to the KGBTexas' business public relations and advertising services for the Plaintiffs' and Defendants' current uses of their respective trademarks to be unlawful with respect to each other.

62. Alternatively, customers who purchase kgb USA's "KGB" advertising services are likely to be confused into believing that they are purchasing advertising services from KGBTexas.

D. TRADEMARK PRIORITY

63. Defendants' United States federal trademark registration number 3,525,085 for the trademark "KGB" for "dissemination of advertising for others via the Internet" states a date of Defendants first use of "KGB" in commerce in the United States of April 30, 2008.

64. Alternatively, Defendants' statement in Defendants' United States federal trademark registration number 3,525,085 that Defendants' date of first use in commerce in the United States of the trademark "KGB" for "dissemination of advertising for others via the Internet" was April 30, 2008 is accurate within a range of three months before or after April 30, 2008.

65. On information and belief, Defendants did not use "KGB" or any formulation of "KGB" as a business name, trademark or service mark in the United States prior to (a) January 1, 2008, (b) January 1, 2007, (c) January 1, 2006, (d) January 1, 2005, (e) January 1, 2005, (f) January 1, 2004, (g) January 1, 2003, (h) January 1, 2002, (i) January 1, 2001, (j) January 1, 2000, (k) January 1, 1999, (l) January 1, 1998, (m) January 1, 1997, (n) January 1, 1996, (o) January 1, 1995, and (p) January 1, 1994. (Please separately admit or deny each separate subpart of this averment. Fed. R. Civ. P. 8(b)(4))

66. On information and belief, Defendants did not use "KGB" or any formulation of "KGB" as a business name, trademark or service mark in the Southwest United States prior to (a) January 1, 2008, (b) January 1, 2007, (c) January 1, 2006, (d) January 1, 2005, (e) January 1, 2005, (f) January 1, 2004, (g) January 1, 2003, (h) January 1, 2002, (i) January 1, 2001, (j)

January 1, 2000, (k) January 1, 1999, (l) January 1, 1998, (m) January 1, 1997, (n) January 1, 1996, (o) January 1, 1995, and (p) January 1, 1994. (Please separately admit or deny each separate subpart of this averment. Fed. R. Civ. P. 8(b)(4)).

67. On information and belief, Defendants did not use "KGB" or any formulation of "KGB" as a business name, trademark or service mark in Texas prior to (a) January 1, 2008, (b) January 1, 2007, (c) January 1, 2006, (d) January 1, 2005, (e) January 1, 2005, (f) January 1, 2004, (g) January 1, 2003, (h) January 1, 2002, (i) January 1, 2001, (j) January 1, 2000, (k) January 1, 1999, (l) January 1, 1998, (m) January 1, 1997, (n) January 1, 1996, (o) January 1, 1995, and (p) January 1, 1994. (Please separately admit or deny each separate subpart of this averment. Fed. R. Civ. P. 8(b)(4)).

68. On information and belief, Defendants did not use "KGB" or any formulation of "KGB" as a business name, trademark or service mark in South Texas prior to (a) January 1, 2008, (b) January 1, 2007, (c) January 1, 2006, (d) January 1, 2005, (e) January 1, 2005, (f) January 1, 2004, (g) January 1, 2003, (h) January 1, 2002, (i) January 1, 2001, (j) January 1, 2000, (k) January 1, 1999, (l) January 1, 1998, (m) January 1, 1997, (n) January 1, 1996, (o) January 1, 1995, and (p) January 1, 1994. (Please separately admit or deny each separate subpart of this averment. Fed. R. Civ. P. 8(b)(4)).

69. On information and belief, Defendants did not use "KGB" or any formulation of "KGB" as a business name, trademark or service mark in the KGBTexas' Home Counties prior to (a) January 1, 2008, (b) January 1, 2007, (c) January 1, 2006, (d) January 1, 2005, (e) January 1, 2005, (f) January 1, 2004, (g) January 1, 2003, (h) January 1, 2002, (i) January 1, 2001, (j) January 1, 2000, (k) January 1, 1999, (l) January 1, 1998, (m) January 1, 1997, (n) January 1,

1996, (o) January 1, 1995, and (p) January 1, 1994. (Please separately admit or deny each separate subpart of this averment. Fed. R. Civ. P. 8(b)(4)).

70. On information and belief, kgb USA did not deliver public relations, advertising and promoting goods and services of others, or advertising for others identified by "KGB" or any formulation of "KGB" to customers located in the United States prior to (a) January 1, 2008, (b) January 1, 2007, (c) January 1, 2006, (d) January 1, 2005, (e) January 1, 2005, (f) January 1, 2004, (g) January 1, 2003, (h) January 1, 2002, (i) January 1, 2001, (j) January 1, 2000, (k) January 1, 1999, (l) January 1, 1998, (m) January 1, 1997, (n) January 1, 1996, (o) January 1, 1995, and (p) January 1, 1994. (Please separately admit or deny each separate subpart of this averment. Fed. R. Civ. P. 8(b)(4)).

71. On information and belief, kgb USA did not deliver public relations, advertising and promoting goods and services of others, or advertising for others identified by "KGB" or any formulation of "KGB" to customers located in the Southwest United States prior to (a) January 1, 2008, (b) January 1, 2007, (c) January 1, 2006, (d) January 1, 2005, (e) January 1, 2005, (f) January 1, 2004, (g) January 1, 2003, (h) January 1, 2002, (i) January 1, 2001, (j) January 1, 2000, (k) January 1, 1999, (l) January 1, 1998, (m) January 1, 1997, (n) January 1, 1996, (o) January 1, 1995, and (p) January 1, 1994. (Please separately admit or deny each separate subpart of this averment. Fed. R. Civ. P. 8(b)(4)).

72. On information and belief, kgb USA did not deliver public relations, advertising and promoting goods and services of others, or advertising for others identified by "KGB" or any formulation of "KGB" to customers located in Texas prior to (a) January 1, 2008, (b) January 1, 2007, (c) January 1, 2006, (d) January 1, 2005, (e) January 1, 2005, (f) January 1, 2004, (g) January 1, 2003, (h) January 1, 2002, (i) January 1, 2001, (j) January 1, 2000, (k) January 1,

1999, (l) January 1, 1998, (m) January 1, 1997, (n) January 1, 1996, (o) January 1, 1995, and (p) January 1, 1994. (Please separately admit or deny each separate subpart of this averment. Fed. R. Civ. P. 8(b)(4)).

73. On information and belief, kgb USA did not deliver public relations, advertising and promoting goods and services of others, or advertising for others identified by "KGB" or any formulation of "KGB" to customers located in South Texas prior to (a) January 1, 2008, (b) January 1, 2007, (c) January 1, 2006, (d) January 1, 2005, (e) January 1, 2005, (f) January 1, 2004, (g) January 1, 2003, (h) January 1, 2002, (i) January 1, 2001, (j) January 1, 2000, (k) January 1, 1999, (l) January 1, 1998, (m) January 1, 1997, (n) January 1, 1996, (o) January 1, 1995, and (p) January 1, 1994. (Please separately admit or deny each separate subpart of this averment. Fed. R. Civ. P. 8(b)(4)).

74. On information and belief, kgb USA did not deliver public relations, advertising and promoting goods and services of others, or advertising for others identified by "KGB" or any formulation of "KGB" to customers located in the KGBTexas' Home Counties prior to (a) January 1, 2008, (b) January 1, 2007, (c) January 1, 2006, (d) January 1, 2005, (e) January 1, 2005, (f) January 1, 2004, (g) January 1, 2003, (h) January 1, 2002, (i) January 1, 2001, (j) January 1, 2000, (k) January 1, 1999, (l) January 1, 1998, (m) January 1, 1997, (n) January 1, 1996, (o) January 1, 1995, and (p) January 1, 1994. (Please separately admit or deny each separate subpart of this averment. Fed. R. Civ. P. 8(b)(4)).

75. On information and belief, Defendants have not acquired from third parties any KGB United States trademark priority rights relevant to public relations or advertising services which predate: (a) January 1, 2008, (b) January 1, 2007, (c) January 1, 2006, (d) January 1, 2005, (e) January 1, 2005, (f) January 1, 2004, (g) January 1, 2003, (h) January 1, 2002, (i)

January 1, 2001, (j) January 1, 2000, (k) January 1, 1999, (l) January 1, 1998, (m) January 1, 1997, (n) January 1, 1996, (o) January 1, 1995, and (p) January 1, 1994. (Please separately admit or deny each separate subpart of this averment. Fed. R. Civ. P. 8(b)(4)).

76. On information and belief, Defendants have not acquired from third parties any KGB United States exclusive trademark priority rights for public relations or advertising services which predate: (a) January 1, 2008, (b) January 1, 2007, (c) January 1, 2006, (d) January 1, 2005, (e) January 1, 2005, (f) January 1, 2004, (g) January 1, 2003, (h) January 1, 2002, (i) January 1, 2001, (j) January 1, 2000, (k) January 1, 1999, (l) January 1, 1998, (m) January 1, 1997, (n) January 1, 1996, (o) January 1, 1995, and (p) January 1, 1994. (Please separately admit or deny each separate subpart of this averment. Fed. R. Civ. P. 8(b)(4)).

V.
CAUSES OF ACTION

A. DECLARATORY JUDGMENT

77. Alternatively, Defendants' acts complained of herein have injured and are likely to injure KGBTexas, including injuring its business reputation and diluting the distinctive quality of its KGBTexas marketing and are likely to injure the mark's value to KGBTexas.

78. On information and belief, Defendants intend to continue using KGB as part of their tradenames and trademarks. KGBTexas seeks a declaratory judgment that KGBTexas' use of the tradenames and trademarks "KGB" and "KGBTexas" to identify its business and its public relations and advertising services is lawful.

79. KGBTexas seeks a declaratory judgment that its marketing and sale of its services is lawful.

80. Alternatively, KGBTexas seeks a declaratory judgment that kgb USA's use of the trademarks "KGB" to identify its advertising services is unlawful.

B. OTHER CAUSES OF ACTION

82. Alternatively, KGBTexas asserts the following causes of action against Defendants: federal unfair competition, state unfair competition, federal trademark infringement, state trademark infringement, federal dilution, state dilution, unjust enrichment and misappropriation. These matters will be more fully pled when circumstances permit in the course of discovery.

VI.
CONSOLIDATED ALLEGATIONS

83. Each of the alleged facts is alleged in support of each cause of action.

VII.
PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED KGBTexas requests:

A. Judgment and declaratory judgment that KGBTexas' use of the tradenames and trademarks "KGB" and "KGBTexas" to identify its business and its public relations and advertising services is lawful.

B. Judgment and declaratory judgment that KGBTexas' marketing and sale of its services is lawful.

C. Judgment and declaratory judgment that kgb USA's' use of the trademark "KGB" is unlawful to the extent it is likely to cause confusion with or dilute the distinctive quality of KGBTexas' "KGB" and "KGBTexas" tradenames and trademarks.

D. Such other and further relief to which KGBTexas is entitled.

KGBTexas does not seek immediate, temporary, or preliminary injunctive relief.

VIII.
JURY DEMAND

KGBTexas respectfully requests a trial by jury.

Respectfully Submitted,

Jackson Walker L.L.P.

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